

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

08-OLR-4

Michael W. Steinhafel
Attorney at Law

The Respondent, Atty. Michael W. Steinhafel, 43, practices law in Brookfield, Wisconsin. This reprimand is based on the Respondent's misconduct relating to three grievances that were filed against him.

FIRST MATTER

A man hired the Respondent in January, 2000 to recover funds that the client believed were owed to him by a former employer. The client paid \$1,000.00 to the Respondent. There was no written fee agreement. The Respondent told the client that he would file a lawsuit and that the client could expect to hear something within 45 days.

When the client did not hear from the Respondent, the client sent faxes and made phone calls to the Respondent from March to June, 2000. In June, 2000, the Respondent told the client that he had been ill but would promptly start the action. In October, 2000, the Respondent called the client to inform him that he had filed the lawsuit, although, in fact, the Respondent never filed a lawsuit on the client's behalf.

The client called the Respondent during 2001 and inquired as to the status of the case. The Respondent told the client that hearings had been postponed. No correspondence was exchanged between the Respondent and the client from October, 2000 through March, 2002; however, the Respondent told the client that a hearing was scheduled for March 11, 2002. In

April and June, 2002, the client sent faxes to the Respondent, inquiring about the outcome of the hearing on March 11, 2002 and the status of the case, but Respondent did not reply.

In July, 2003, the Respondent told the client that he had filed a motion for summary judgment against the defendant company and that the motion would be heard on August 14, 2003. In a subsequent phone conversation, the Respondent told the client that the court did not issue a decision at the August 14th hearing. The client made repeated attempts to contact the Respondent thereafter, via phone and fax, without receiving a response.

In March, 2004, the client wrote to the Respondent, requesting return of the case file, but the Respondent did not reply. The client subsequently hired a new attorney to contact the Respondent. The new attorney wrote to the Respondent in late March, April and May, 2004, requesting the return of the case file. The Respondent called the new attorney in mid-April, 2004 and said he would get back to him, but the new attorney received no further communication. In May, 2004, the client filed a grievance with OLR.

The client also hired his new attorney to file a lawsuit against the former employer. However, the client did not receive the case file from the Respondent until the Respondent submitted a copy of the file in his response to the grievance on September 24, 2004. The Respondent has not returned any portion of the \$1,000.00 advanced by the client.

In his response to the grievance, the Respondent asserted, in part, that he had had “at least two meetings” with the client or that Respondent had had “three or four meetings” with the client, in addition to the initial consultation. There is nothing in the case file, however, to support the Respondent’s statements of having had multiple meetings with the client.

After being paid an advance of \$1,000.00 in January, 2000, to pursue an action against the man’s former employer, the Respondent failed to file and prosecute a lawsuit against the

former employer for the next four years, contrary to SCR 20:1.3, which states, “A lawyer shall act with reasonable diligence and promptness in representing a client.

By failing to provide the client with accurate information regarding case status, and by failing to respond to the client’s periodic faxes in which the client asked the Respondent to contact him with a status update, the Respondent violated former SCR 20:1.4(a), effective prior to July 1, 2007, which states, “A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”

By representing to the client in the course of telephone conversations that he had filed a lawsuit on the client’s behalf; that hearings in the purported suit had been postponed; that a certain hearing would occur on March 11, 2002; and that he had filed a summary judgment motion in the matter, when, in fact, the Respondent had not even commenced an action on the client’s behalf, Respondent violated SCR 20:8.4(c), which states, “It is professional misconduct for a lawyer to...engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

In failing to have the case file returned to the client and/or his successor counsel until September, 2004, after they asked the Respondent to return the file in March, April, and May, 2004, and in failing to refund any portion of the \$1,000.00 advanced fee when the Respondent had notice that the client was terminating the representation, and the Respondent had performed minimal work in the case, the Respondent violated former SCR 20:1.16(d), effective prior to July 1, 2007, which states in part, “Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as...surrendering papers and property to which the client is entitled...”

SECOND MATTER

In January, 2005, a client filed a grievance against the Respondent in an unrelated matter. Following investigation, the Director determined that there was insufficient evidence of misconduct by the Respondent relating to his representation of the client. During the investigation, however, the Respondent failed to submit a written response to OLR that was due on April 29, 2005 until September 8, 2005, and only after the Wisconsin Supreme Court had issued an order to show cause why the Respondent's license should not be temporarily suspended for non-cooperation with OLR's investigation.

In failing to submit a timely written response that was due on April 29, 2005 until September, 2005, the Respondent violated SCR 22.03(2) and (6), which state:

SCR 22.03

- (2) Upon commencing an investigation, the director shall notify the respondent of the matter being investigated unless in the opinion of the director the investigation of the matter requires otherwise. The respondent shall fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct within 20 days after being served by ordinary mail a request for a written response. The director may allow additional time to respond. Following receipt of the response, the director may conduct further investigation and may compel the respondent to answer questions, furnish documents, and present any information deemed relevant to the investigation.

...

- (6) In the course of the investigation, the respondent's wilful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance.

Violations of SCR 22.03(2) and (6) occurring prior to July 1, 2007 are enforceable under the Rules of Professional Conduct via SCR 20:8.4(f), which states in part, “It is professional misconduct for a lawyer to violate a...supreme court rule...regulating the conduct of lawyers.

THIRD MATTER

On February 6, 2007, a woman hired the Respondent to evict a tenant from the woman’s rental property because the tenant had failed to pay a security deposit or to timely pay rent. The woman had already served the tenant with a 14-day notice to terminate tenancy. The Respondent quoted a flat fee of \$750.00 to handle the matter, which the woman promptly paid. The Respondent told the client that he could not do anything until February 19, 2007, when the 14-day notice would expire. The Respondent told the client that it would take some time, perhaps until April, 2007, to get the tenant out.

During the meeting on February 6, 2007, the Respondent advised the client to have her son pose as an insurance inspector to go through the apartment and determine if it was being damaged. The Respondent made an appointment with the tenant for the inspection, but when the client’s son arrived at the apartment, the tenant was leaving for a medical appointment and the son could not enter the premises. The tenant told the client’s son that she had informed the Respondent of her medical appointment. The Respondent later told the client that the tenant left the message after his office was closed for the day. The client’s son inspected the premises on or about March 1, 2007 and discovered some damage being done to the lawn.

The client told OLR that after the meeting on February 6, 2007, whenever she called the Respondent to receive an update on the eviction matter, her calls were not returned. The client said that she had no information on the status of the matter.

The tenant delivered rent checks to the client for the months of February and March, 2007, and the client turned the checks over to the Respondent. During March, 2007, the Respondent told the client that his process server had made three unsuccessful attempts to serve an eviction notice on the tenant. In fact, the Respondent had not attempted such service. In late March, 2007, the Respondent returned the February and March rent checks to the client and instructed her to cash them, as opposed to depositing them, so that the client would not have to pay a bank charge if the checks were returned for insufficient funds.

The client told OLR that she subsequently made calls to the Respondent to learn the status of the eviction case but he did not return her calls. The client said that the only way she could reach the Respondent was to call his office and if he was on the phone, to wait until that call ended.

The client expressed frustration to the Respondent in mid-May, 2007, because it appeared that nothing was being done on the eviction. A couple of days later, the Respondent told the client that they had a court date on May 18, 2007; that the client need not attend; and that the Respondent would call her after court. In fact, the Respondent never filed any submission with a court on the client's behalf. When the client reached the Respondent the week following the Respondent's representations about a court date, the Respondent said that the tenant had not appeared in court and was required to vacate the premises by the end of May.

On June 2, 2007, the client observed that the tenant was still in the apartment. The client called the Respondent, who said he would take care of the matter. The Respondent subsequently offered various excuses, including that he was waiting to hear back as to when the tenant would leave; that the client was on a list with the sheriff's department and had to wait her turn to have

the sheriff serve papers; and that the Respondent would call her back as soon as he heard something.

The Respondent subsequently told the client that the police were going to evict the tenant on either Friday, June 15 or Monday, June 18, 2007. The client scheduled a cleaning crew to accompany her to the apartment on Tuesday, June 19, 2007. The client said that when she called the Respondent on the morning of June 19, 2007 to confirm that the eviction had occurred as anticipated before she went to the apartment for repairs and cleaning, the Respondent became very upset and said she could not do that. According to the client, the Respondent said he would check it out and get back to her, but he did not call back. The client dismissed the cleaning crew.

The client subsequently called local court authorities and learned that there was no record relating to an eviction of the tenant. The client called the Respondent's office assistant and requested copies of the purported writ of eviction and findings from the purported May, 2007 court appearance, but the assistant was unable to locate the documents. The client subsequently wrote to the Respondent and requested copies of paperwork, but the client received no response. The client filed a grievance with OLR and hired a new attorney to represent her. The new attorney obtained an eviction and money judgment against the tenant. The client later told OLR that the Respondent's inaction harmed her financially because she lost two months' rent and had to pay an additional utility bill.

The Respondent admitted to OLR that the client's allegations were accurate. The Respondent acknowledged that the client's case did not receive the attention it required and that the client was misled concerning its status. The Respondent apologized and offered to refund the fee that the client had paid. While the grievance investigation was pending, the Respondent refunded the fee to the client and again apologized to her.

The Respondent told OLR that his prediction that the case could be completed by April, 2007, while underestimated, was made in good faith. The Respondent also indicated that he was experiencing medical problems during the period that he was representing the client.

After being hired by the client in early February, 2007 to bring an eviction action against a tenant, the Respondent failed to initiate any court proceeding in the matter for the next five months, in violation of Supreme Court Rule (SCR) 20:1.3, which states, “A lawyer shall act with reasonable diligence and promptness in representing a client.”

By failing to respond to numerous telephonic inquiries from the client regarding case status, and by providing the client with incorrect information regarding case status, the Respondent violated former SCR 20:1.4(a), effective prior to July 1, 2007, which states, “A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”

SCR 20:8.4(c) states, “It is professional misconduct for a lawyer to...engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” The Respondent violated SCR 20:8.4(c) as follows:

- By advising the client to have her son pose as an insurance inspector so as to gain access to the tenant’s apartment, and by making an appointment with the tenant for the purported insurance inspection.
- By representing to the client that he had attempted, through a process server, to serve an eviction notice on the tenant, when in fact he had not done so.
- By representing to the client that he had filed an eviction action on the client’s behalf, when in fact he had not done so.
- By representing to the client that a hearing had been conducted in the purported eviction action and that, at the hearing, the tenant had been ordered to vacate the apartment, when in fact no action had been filed and no hearing had been conducted.

- By representing to the client that the sheriff's department would act to evict the tenant on either June 15 or 18, 2007, when no eviction action had been filed and no basis existed for the eviction of the tenant.

As a prior condition to the imposition of a consent public reprimand, the Respondent refunded to his client in the first matter the amount of \$1,000.00 and submitted proof to the Director of his compliance with this condition.

The Respondent has no prior discipline.

In accordance with SCR 22.09(3), Attorney Michael W. Steinhafel is hereby publicly reprimanded.

Dated this 21st day of April, 2008.

SUPREME COURT OF WISCONSIN

/s/ David R. Friedman
/s/ Referee David R. Friedman